Case No. 24-5056

United States Court of Appeals
for the Sixth Circuit

MOMS FOR LIBERTY – WILSON COUNTY, TN;
ROBIN LEMONS; AMANDA DUNAGAN-PRICE
Plaintiffs-Appellants,

v.

WILSON COUNTY, TN BOARD OF EDUCATION et al
Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Tennessee

BRIEF OF APPELLEES

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DISCLOSURE STATEMENT

Counsel for Defendants-Appellees, Wilson County Board of Education, Jamie Farough, Kimberly McGee, Melissa Lynn, Beth Meyers, Joseph Padilla, Carrie Pfeiffer and Larry Tomlinson, states that none of the defendants is a subsidiary or affiliate of a publicly owned corporation and no publicly owned corporation has a substantial interest in the outcome of this litigation.

/s/ Christopher C. Hayden

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STATEMENT WAIVING ORAL ARGUMENT

Defendants do not request oral argument. This case does not present novel issues of fact or law for the Court. Instead, this matter involves legal issues in which there exists prior precedent of this Court that is directly on point. As a result, the Defendants submit to the Court that oral argument would not substantially benefit the Court's analysis of this matter.

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The Defendants concur with the Plaintiffs' Statement of Jurisdiction.

STATEMENT OF ISSUES FOR REVIEW

1. Whether the trial court correctly denied the Plaintiffs' request for preliminary injunction.

INTRODUCTION

While the parties to this action and, indeed Americans at large, may not agree on much, they can likely agree on one thing - that the publicly accepted level of civil discourse and the manner in which it is delivered has declined rapidly across the country in recent years. Whether it is in the halls of Washington or on the sidelines of a high school sporting event, individuals commonly interact in ways now that, mere years ago, would be reserved for one's greatest enemy. This decline has seeped into all areas of society, including the meetings of local school boards.

No one is more aware of this than Defendant Wilson County Board of Education, as well as some of its individually named members whose perceived political views have drawn the ire of Plaintiffs. Beginning during the COVID pandemic and continuing to present day, the Defendants, and local governmental bodies across the country, have witnessed their previously orderly and genteel meetings, which exist solely for handling issues related to the operation of public school systems, routinely descend into utter anarchy. Countless meetings have been interrupted by meeting attendees publicly and repeatedly harassing, and sometimes threatening, the public officials sitting in front

of them, often regarding issues completely irrelevant to the topics of the meeting or the governance of the school system.

It is against this backdrop that this instant matter comes before the Court. While Defendants wholeheartedly agree with the Plaintiffs that the Plaintiffs, and all other American citizens, have a Constitutional right to participate in their governance, the Defendants respectfully disagree with the Plaintiffs' assertions regarding the manner in which the Plaintiffs insist it be done. As this Court has recognized, local governmental bodies, such as Defendant Wilson County Board of Education, maintain the ability to construct guardrails to effectuate the efficient operation of its affairs while still allowing its constituents the ability to participate in the democratic process and petition their elected officials within the bounds of the Constitution. That is what the Defendants have done, and that is why the trial court denied the Plaintiffs' request for a preliminary injunction. That is also why the Defendants respectfully request that this Court leave the trial court's decision undisturbed.

STATEMENT OF CASE

On March 9, 2023, the Plaintiffs filed a lawsuit against the Defendants, alleging violations of the Plaintiffs' First and Fourteenth Amendment Rights. (Complaint, R.1, PageID##1-56). The Plaintiff alleged several facial challenges, including challenges to: (1) The Board's practice requiring citizens to verbally disclose their address before speaking at Board meetings; (2) The Board's practice regarding "abusive" comments during Board meetings; and (3) The Board's policy requiring that comments during Board meetings must be in "the public interest." (Complaint, R.1, PageID##1-56). The Plaintiff also alleged as-applied challenges to the Board's enforcement of the address disclosure requirement against Plaintiff Lemons at the Board's regularly-scheduled meeting on October 3, 2022. (Complaint, R.1, PageID##1-56). On March 21, 2023, the Plaintiffs filed a Motion for a Preliminary Injunction, seeking to prohibit the Defendants from enforcing the Wilson County Board of Education's practices and policies: (1) requiring that individuals speaking at Board meetings verbally disclose their address at the beginning of their remarks; (2) prohibiting speakers from making allegedly "abusive" comments; and (3) requiring that individuals prove

that their comments are in the "public interest" before speaking. (Plaintiffs' Motion for Preliminary Injunction, R. 16, PageID##78-80).

Meetings held by the Board are open to the public. (Complaint, R.1, PageID#5). The Board also allows public comments at the meetings. (Complaint, R.1, PageID#5). The Wilson County Schools Policy Manual sets forth rules about citizen participation at meeting in Policy 1.404. (Complaint, R.1, PageID#5). At the time of the briefing on this matter, Policy 1.404 provided three ways that citizens can speak at board meetings.[1] First, any individual can ask for time on the meeting agenda ten days before the meeting. (Complaint, R.1, PageID#6). Second, individuals can speak about items on the agenda. (Complaint, R.1, PageID#6). Third, an individual can ask any board member for permission to speak about an issue not on the agenda. (Complaint, R.1,

[1] As the Plaintiffs note in their briefing before this Court, this policy has been amended since this matter was briefed in the trial court but that amendment is not material to the questions presented to this Court. Specifically, as the trial court noted, at all relevant times, regardless of the version of the policy in question, there has always been multiple avenues under this policy to appear before the Board. Only one has the "public interest" requirement complained of by the Plaintiffs. The other does not. If the Plaintiffs wish to avoid this requirement, at all times they have retained the ability to address comments to the Board through another avenue which lacks this requirement. The most recent version of this policy can always be found at https://go.boarddocs.com/tn/wcschools/Board.nsf/goto?open&id=C8FHNU495D5F#.

PageID#6). Under the third method, if the issue is not on the agenda, the board member must make a determination as to whether the issue is "in the public interest." (Complaint, R.1, PageID#6). Policy 1.404 also previously required the individual to publicly state his or her address before speaking. (Complaint, R.1, PageID#6). Policy 1.404 has been amended to abolish this requirement. (Revised Policy 1.404, R.26-4, PageID##236-37).

At all times relevant to the Complaint the Chairman of the Board also announced additional guidelines regarding addressing the Board at their meetings. (Complaint, R.1, PageID#6). These additional guidelines included prohibiting disruptive behavior and any comments that were abusive to an individual Board member, the Board as a whole, the Director of Schools or any employee of the school system. (Complaint, R.1, PageID#7). Like the "address announcement" issue, the Defendants also revised their guidelines and practices after the filing of the Plaintiffs' Complaint to remove the prohibition on disruptive behavior and abusive comments. In their Motion for Preliminary Injunction the Plaintiffs requested an order prohibiting the Defendants from enforcing the Board's policies requiring that individuals speaking at Board meetings to: 1) disclose their address; 2) prohibiting speakers for making allegedly

abusive comments; and, 3) requiring individuals to prove that their comments are in the public interest before speaking. (Plaintiff's Motion for Preliminary Injunction, R.16, PageID#78).

SUMMARY OF THE ARGUMENT

The Defendants respectfully submit to the Court that the trial court's ruling on the Plaintiffs' Motion for Preliminary Injunction is correct and should remain undisturbed. The Plaintiffs have not demonstrated a strong likelihood of success on the merits since their arguments regarding the address-disclosure requirement and the restriction against abusive comments have been mooted by action of the Defendants. Furthermore, their arguments regarding the public-interest requirement also fail since the requirement does not discriminate against speech based upon viewpoint. Furthermore, the Plaintiffs have failed to establish that they will suffer irreparable harm if their requested preliminary injunction is not issued. Instead, the proof in this matter demonstrates that the issuance of the Plaintiffs' requested preliminary injunction would cause substantial harm to others and would not further the public interest. Finally, assuming arguendo that the Court finds the above arguments unpersuasive and does decide in favor of the Plaintiffs, the bond contemplated by Rule 65(c) should not be waived as to the Plaintiffs.

STATEMENT OF THE STANDARD OF REVIEW

"The ultimate decision to grant an injunction is reviewed for an abuse of discretion." *S. Glazer's Distribs. Of Ohio, LLC v. Great Lakes Brewing Co.*, 860 F.3d 844, 849 (6th Cir. 2017). "The party seeking a preliminary injunction bears a burden of justifying such relief, including showing irreparable harm and likelihood of success." *Kentucky v. U.S. ex rel. Hagel*, 759 F.3d 588, 600(6th Cir. 2014)(*quoting Michigan Cath. Conf. & Cath. Fam. Servs. v. Burwell*, 755 F.3d 372, 382 (6th Cir. 2014)).

To obtain a preliminary injunction, the plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "A preliminary injunction is an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the circumstances clearly demand it." *Overstreet v. Lexington-Fayette Urb. Cnty. Gov't.*, 305 F.3d 566, 573 (6th Cir. 2003). A plaintiff seeking a preliminary injunction cannot merely rely upon unsupported allegations, but must come forward with more than "scant evidence" to

prove their allegations. *See, e.g. Libertarian Party of Ohio v. Husted*, 751 F.3d 403, 417 (6th Cir. 2014).

ARGUMENT

I. The Plaintiffs have not shown a strong likelihood of success on the merits as the Plaintiffs' arguments regarding the address-disclosure requirement and restriction against abusive comments are moot.

In this case, the Plaintiffs challenge the Board's practice of requiring individuals appearing before the Board to announce their address before speaking. (Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction, R.17, PageID##97-101). In addition, the Plaintiffs challenge the Board's practice of prohibiting individuals appearing before the Board from engaging in "abusive" or "disruptive" language. (Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction, R.17, PageID##101-04). The Defendants have changed their practices with regard to both the address-disclosure requirement and the restriction against "abusive" or "disruptive" language. As a result, the Plaintiffs' challenges to these requirements are moot.

Article III of the Constitution limits the "judicial power" of the United States to the resolution of "cases" and "controversies." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982). A case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *United States Parole Comm'n v. Geraghty*, 445 U.S. 388 (1980). Here, the issues presented by the Plaintiffs regarding the address disclosure requirement and the restriction against "abusive" or "disruptive" language are no longer "live."

Prior to the filing of the Plaintiffs' lawsuit, the "address disclosure" and "abusive language" practices complained of by Plaintiffs existed in three different sources employed by the Defendants. First, the Defendants utilized a script, which the Chairman read aloud before the public comment portion of the Board meetings. (Delegate Instructions, R.21-1, PageID#193). The script requested that any individuals appearing before the board state their address. (Delegate Instructions, R.21-1, PageID#193). In addition, it stated that the Board reserves "the right to terminate remarks at any time that you fail to adhere to the guidelines or that your comments become abusive to an individual

Board Member, the Board as a whole, the Director of Schools or any employee of the school system." (Revised Delegate Instructions, R.21-1, PageID#193).

The Defendants have created a new script, removing the address disclosure requirement and the restriction against "abusive" language. (Revised Delegate Instructions, R.21-2, PageID#194). Going forward, the Defendants will read aloud the new script before the public comment portion of any Board meetings. (Revised Delegate Instructions, R.21-2, PageID#194). The Defendants have already implemented this change in their practices. At the regularly held Board meeting on April 3, 2023, the Defendants utilized the new script, which does not contain the address disclosure requirement or the restriction against "abusive" language. (Please see video of April 3, 2023 Board meeting 49:50-50:45 https://wilsoncountyschoolstn.new.swagit.com/videos/223218). Indeed, as of the filing of this instant brief, which is almost exactly a year removed from this change in practice by the Defendants, the Defendants have continued this practice as can be evidenced by a viewing of any of their board meetings since that time. As they have for the last year, the Defendants will continue this practice into the future.

The second source that housed these two practices prior to the filing of this instant action was on a form that individuals wishing to be added to the agenda for a Board's meeting for the purpose of publically addressing the Board were required to complete and submit to the Board prior to being added to the agenda. (Agenda Request Form, R.21-3, PageID#195). Pursuant to that original form, "[e]ach person speaking shall state his name, address, and subject of presentation. (Agenda Request Form, R.21-3, PageID#195). The Chairman shall have the authority to terminate the remarks of any individual who is disruptive or does not adhere to Board rules." (Agenda Request Form, R.21-3, PageID#195).

As it did with the script referenced *supra*, the Board also amended the Agenda Request Form to remove references to the address disclosure requirement and restriction against "disruptive" language. (Revised Agenda Request Form, R.21-4, PageID#196). That newly revised Agenda Request Form was implemented for the April 3, 2023 Board meeting. (Agenda Request Form, R.21-4, PageID#196). Again, as of the date of this brief, the Defendants have continued to use this revised Agenda Request Form for a year. As is evidenced by this change, the Defendants

have and will only employ this revised Agenda Request Form going forward into the future.

The third, and last source, housing these two practices prior to the filing of this instant action is Wilson County Board of Education Policy. Specifically, Board Policy 1.404 requires that "each person speaking [before the Board] shall state his name, address, and subject of presentation. (Complaint, R.1, PageID#6-7). The Chairman shall have the authority to terminate the remarks of any individual who is disruptive…" (Complaint, R.1, PageID#7). At the regular Board meeting on May 1, 2023, the Board approved on first reading a revised version of Policy 1.404, which removes the verbal address disclosure requirement and the prohibition against "disruptive" language. (Agenda Item Detail from May 1, 2023 Board Meeting, R.26-1, PageID#232) (Policy 1.404 Draft Containing Proposed Revisions, R.26-2, PageID#233-234).

At the regular Board meeting on June 5, 2023, the Board approved on its second, and final, reading the revised version of Policy 1.404. (Agenda Item Detail from June 5, 2023 Board Meeting, R.26-3, PageID#235) (Revised Policy 1.404 R.26-4, PageID##236-37). Board policies become effective immediately upon their approval following a final reading. As a result, the Defendants have changed their policy and

practice of requiring individuals appearing before the board to orally disclose their address and have changed their policy and practice on the restriction of "abusive" or "disruptive" language. This pertinent policy language has remained in place for the better part of a year at this point and will continue into the future. Thus, the Defendants respectfully submit that the Plaintiffs' allegations in their Complaint, as well as their arguments in their Motion for a Preliminary Injunction, regarding the address-disclosure requirement and the restriction against "abusive" or "disruptive" language are moot.

In summation, the Defendants have changed their practice of requiring individuals appearing before the Board to disclose their address. (Revised Delegate Instructions, R.21-2, PageID#194). (Please see video of April 3, 2023 Board meeting 49:50-50:45 https://wilsoncountyschoolstn.new.swagit.com/videos/223218) (Revised Agenda Request Form, R.21-4, PageID#196). The Defendants have further revised their pertinent policy and changed their practice on the restriction of "abusive" or "disruptive" language. (Revised Delegate Instructions, R.21-2, PageID#194). (Please see video of April 3, 2023 Board meeting 49:50-50:45 https://wilsoncountyschoolstn.new.swagit.com/videos/223218)

(Revised Agenda Request Form, R.21-4, PageID#196). Therefore, the Plaintiffs' challenges to the address-disclosure requirement and the restriction on "abusive" or "disruptive" language are moot. As a result, the Plaintiffs do not demonstrate a strong likelihood of success on the merits, and their Motion for Preliminary Injunction was properly denied by the trial court. The Defendants respectfully request that this Court act consistently for the same reasons.

As the trial court correctly held, the Plaintiffs also fail to show that they are likely to suffer imminent and irreparable harm in the absence of injunctive relief from the address disclosure requirement and the abusive comment prohibition. The Plaintiffs acknowledged that the Defendants have not moved to dismiss any of the Plaintiffs' claims. (Plaintiffs' Reply in Support of Motion for Preliminary Injunction, R.22, PageID#200).

As argued above, mootness has only been raised in response to the Plaintiffs' motion for preliminary injunction. Therefore, it is the Defendant's position that it is not necessary for the Court to assess at this juncture whether the Plaintiffs' claims are moot in light of the Defendant's voluntary cessation. Importantly, voluntary cessation is pertinent as it pertains to the Plaintiffs' motion for preliminary

injunction as it impacts the ability to show substantial and irreparable injury as required in order to obtain a preliminary injunction. *Milwaukee Police Association vs. Jones*, 192 F.3d 742, 748 (7th Cir. 1999).

Therefore, as determined by the District Court, the Plaintiffs are not likely to suffer imminent and irreparable harm from the address disclosure requirement or the abusive/disruptive comment restriction, as those requirements have been removed from the Defendant's policies and practices. (Memorandum Order and Opinion, R.30, PageID#262). As those requirements are no longer included in the sign-up form, pre-meeting script or Policy 1.404, the Defendants have clearly demonstrated that the Plaintiffs are not likely to suffer imminent and irreparable harm. As these were the requirements the Plaintiffs alleged chilled their free speech, they can now speak freely at any Board meeting without having to meet these requirements and have been able to for a year. The trial court was correct on this issue and the Defendants respectfully submit that this Court should not disturb its holding.

II. The public-interest requirement does not discriminate against speech based on viewpoint.

A. The public-interest requirement is viewpoint neutral and reasonable in light of the purpose served by the forum.

In addition to the challenges discussed *supra*, the Plaintiffs take issue with the portion of Wilson County Board of Education Policy 1.404, which states that "The Chairman or individual Board Member may recognize individuals not on the agenda for remarks to the Board if he/she determines that such is in the public interest." (Complaint, R.1, PageID#6). The Plaintiffs argue that this portion of the policy violates the First Amendment, because the public-interest requirement "discriminates against speech based on viewpoint." (Plaintiffs' memorandum in Support of Motion for Preliminary Injunction, R.17, PageID#104). However, a requirement that an individual's remarks be in the public interest does not constitute viewpoint discrimination. Instead, as the District Court correctly noted, it allows individuals that did not use the process described in the policy to specifically address an agenda item to still offer public comment while preserving the Board's interest in conducting its business in an orderly manner.

This brings up an important consideration entirely omitted from the Plaintiffs' brief before this Court on this public-interest requirement:

pursuant to Wilson County Board of Education Policy 1.404, this requirement does not apply to all speakers. Should a speaker wish to address the Board without this requirement, Wilson County Board of Education Policy 1.404 provides a clear avenue to do so.

However, in deference to board meeting attendees that may want to address the Board on an issue that is not on that meeting's agenda, Wilson County Board of Education Policy 1.404 contains a mechanism whereby members of the public may address the Board on a topic that is not on the meeting's agenda. The only thing that the Policy requires is that topics that are not on the meeting's agenda be in the public-interest so as to ensure that discussion topics remain germane to the reason that the board meeting is even happening: the operation of the Wilson County primary public school system. As a result, the Defendants suggest that it is clear that the public interest-requirement in Wilson County Board of Education Policy 1.404 does not constitute viewpoint discrimination.

To analyze this, we must discuss the Constitutional backdrop against which such First Amendment claims are analyzed. A school board meeting, when opened to the public, is a limited public forum for discussion of subjects relating to the operation of the schools. *City of*

Madison Joint Sch. Dist. No. 8 v. Mis. Employment Relations Comm'n, 429 U.S. 167, 175-76 (1978); *Lowery v. Jefferson County Bd. of Educ.*, 522 F.Supp.2d 983 (E.D. Tenn. 2007). In a limited public forum, the government "is not required to and does not allow persons to engage in every type of speech." *Good News Club v. Milford Cent. Sch.,* 533 U.S. 98, 106 (2001). The government may restrict speech so long as the restrictions are viewpoint neutral and "reasonable in light of the purpose served by the forum." *Good News Club*, 533 U.S. at 106-07. A public body does not violate the First Amendment when it limits speech to a certain topic in a public meeting. *Shields v. Charter Tp. of Comstock*, 617 F.Supp.2d 606 (W.D. Mich. 2009).

As mentioned *supra*, it is the Board's policy that individuals not on the agenda may appear before Board to discuss a topic not on the agenda if the Chairman or a Board member determines that it is in the public interest. (Policy 1.404 Draft Containing Proposed Revisions, R.26-2, PageID#233). This policy is viewpoint neutral. Viewpoint discrimination occurs when speech is restricted because of the speaker's viewpoint on a topic, meaning but for the perspective of the speaker, the speech would normally be permissible. *Lamb's Chapel v. Ctr. Moriches Union Free*

Sch. Dist., 508 U.S. 384 (1993); *Davis v. Colerain Twp.*, 551 F.Supp.3d 812 (S.D. Ohio 2021).

Here, the Board's policy requiring that speech be in the "public interest" is not dependent on the perspective or viewpoint of the speaker. It is only required that the individual's speech be relevant to the general public since the individual will be addressing a public body in a public meeting on a topic that isn't on the meeting's agenda. As such, the public interest requirement permits all viewpoints as long as the topic is something that is germane to the meeting and thus that the general public that has chosen to attend the meeting has an interest in. Therefore, this requirement is viewpoint neutral.

The test for viewpoint discrimination is whether within the relevant subject category the government is singled out a subset of messages for disfavor based on the views expressed." *Matel vs. Tam*, 582 U.S. 218, 248 (2017) (Kennedy, J., concurring) (citing *Cornelius vs. NAACP Legal Defense and Education Fund, Inc.*, 473 U.S. 788, 806 (1985)). "The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rossenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

In this case the public interest provision does not suppress speech based on the board's disfavor of particular views expressed by that speech. Instead, this public interest provision simply provides a screening mechanism by which the board may determine whether certain speech, specifically speech that is about a topic not on the agenda, is relevant to the purpose of the meeting. The public interest provision in this case does not restrict individuals from sharing their views on a particular issue, but it does limit the scope of topics that may be discussed at the current board meeting regardless of what views would be expressed during any discussion on those topics. As long as the speech in question is relevant to the general public, the provision does not discriminate based on views expressed, whatever those views happen to be.

However, the plaintiffs would have you believe that what the general public considers interesting or relevant might not match what a particular speaker considers interesting or relevant. (Plaintiffs' Reply in Support of Motion for Preliminary Injunction, R.22, PageID#203). It is Plaintiffs' argument that prohibiting an individual from expressing an opinion or viewpoint that the individual sees as being a matter of public interest even though the board or general public may not agree, is

discriminatory on the basis of the disagreement as to what is a matter of public interest. (Plaintiffs' Reply in Support of Preliminary Injunction, R.22, PageID#203).

However, such a broad argument or viewpoint of discrimination is misplaced. Rather, the provision is simply furthering the Board's objective to confine the topics of discussion that do not appear on the agenda to issues that concern the public at large. Importantly, the provision "has nothing to do with the [viewpoint] of an individual's proposed speech and everything to do with conducting orderly, productive meetings." *Lowery v. Jefferson County Bd. of Educ.*, 586 F.3d 427, 433 (6th Cir. 2009). As such, the public interest provision does not discriminate based upon viewpoint and therefore the Court was correct in denying the plaintiffs' motion for preliminary injunction on those grounds.

This requirement is also "reasonable in light of the purpose served by the forum." *Good News Club*, 533 U.S. at 106-07. The Wilson County Board of Education is a legal policy-making body created by the State of Tennessee to operate the local public schools. (Complaint, R.1, PageID#4). The Board conducts official meetings, which are held monthly. (Complaint, R.1, PageID#4). The purpose of these meetings is

to transact the Board's business, including policy oversight, educational planning, provision of finances, and maintaining a relationship with the public. The Board's requirement that speech be in the public interest is reasonable in light of this purpose.

In *Youkhana v. City of Sterling Heights*, in reference to an alleged prior restraint requiring speech at a city council meeting to be relevant to the agenda, this Court wrote, "[w]e can think of no content-based restriction more reasonable than asking that content be relevant." *Youkhana v. City of Sterling Heights,* 934 F.3d 508, 519 (6th Cir. 2009). In the analogous situation facing the Court in this instant matter, the public interest provision here only restricts comments regarding items not on the meeting's agenda to topics that concern the public at large and thus which are germane to the meeting's purpose of guiding the operation of the public school system. The public interest provision encourages orderly board meetings while attempting to avoid time wasting and resources from lengthy discussions about personal or otherwise irrelevant topics.

Of note, this Court previously endorsed this very principle when it stated that "[u]nstructured, chaotic school board meetings not only would be inefficient but also could deny other citizens the chance to

make their voices heard. That is why public bodies may confine their meetings to specified subject matter." *Lowery,* 586 F.3d at 433 (internal citations omitted). In this instant matter before the Court, the public interest provision only applies to the alternate avenue in the Defendant's Policy in which any board member may recognize individuals not on the agenda to speak if he or she determines that the individual's remarks are in the public interest. It is certainly reasonable that the Board maintains some discretion to limit speech made by individuals wishing to discuss non-agenda items via this method to ensure that only relevant topics are addressed.

In the interest of conducting its Board meetings in an orderly and efficient manner then, the Defendants submit that it is reasonable for the Board to require that any comments made about items not on the agenda be in the public interest. Otherwise, members of the public could speak on any imaginable topic at a Board meeting, regardless of the topic's relevance to matters involving the school system. Unstructured, chaotic school board meetings would not only be inefficient but also could deny other citizens the chance to make their voices heard. *Lowery*, 586 F.3d 427. That is why "public bodies may confine their meetings to specified subject matter." *Lowery,* 586 F.3d at 433. The Board's

requirement that any comments made about items not on the agenda be in the public interest reasonably allows public comment while preserving the Board's interest in conducting its business in an orderly manner.

Because the Board's public interest requirement is both viewpoint neutral and "reasonable in light of the purpose served by the forum," the public interest requirement does not constitute viewpoint discrimination in violation of the First Amendment. As a result, the Plaintiffs do not demonstrate a strong likelihood of success on the merits, and the District Court's denial of the Motion for Preliminary Injunction should be upheld.

B. The public-interest requirement is an appropriate time, place, and manner restriction.

At the time relevant to the filing of the Complaint, the Board had three methods by which members of the public may appear at a Board meeting. (Complaint, R.1, PageID#5). First, an individual can be placed on the agenda by submitting a written request with descriptive materials to the office of the Director of Schools ten (10) working days before the scheduled regular Board meeting. (Complaint, R.1, PageID#6). Second,

if an individual wishes to address the Board on an item on the agenda, they may sign up on the form provided or make a request to any Board member before the beginning of the Board meeting. (Complaint, R.1, PageID#6). Third, the Chairman or individual Board Member may recognize individuals not on the agenda for remarks to the Board if he/she determines that such is in the public interest. (Complaint, R.1, PageID#6).[2]

The method which contains the public interest requirement is a reasonable time, place, and manner restriction. It is well established that, in the interest of conducting orderly and efficient meetings, school boards and other similar public bodies are permitted to adopt time, place, and manner rules or regulations. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983). The government may regulate the time, place and manner of speech so long as the regulation is (1) content-

[2] Again, this policy has been amended by the Defendant during the pendency of this action but not in any way that materially changes the effect of the policy on this legal point. The amended policy includes two methods of addressing the Board, one in which the individual wishing to speak is constrained to topics on the meeting's agenda and one in which the speaker wishes to address the Board on a topic not on the meeting's agenda. As in previous versions of the policy, the amended policy in force now only contains a public interest requirement for individuals wishing to speak on a topic not on the meeting's agenda in an attempt to ensure that individual's speech is germane to the purpose of the meeting.

neutral, (2) narrowly tailored to serve a significant governmental interest and (3) leaves open ample alternative channels for communication of the information. *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293-95, (1984).

The avenue of addressing the Board subject to the public interest requirement contained within Board Policy 1.404 constitutes a reasonable time, place, and manner restriction. First, it is content-neutral on its face. This avenue of public address allows all speech, regardless of content, as long as it is relevant to the general public and thus germane to the purpose of the meeting. *Lowery v. Jefferson County Bd. of Educ.,* 586 F.3d 427, 433 (6th Cir. 2009).

Second, it serves a significant governmental interest. There is a significant governmental interest in maintaining structured, orderly school board meetings. ("Unstructured, chaotic school board meetings not only would be inefficient but also could deny other citizens the chance to make their voices heard…That is why 'public bodies may confine their meetings to specified subject matter.'") *Id.* The public interest requirement allows the Board to maintain structured, orderly Board meetings by ensuring that individuals do not appear before the Board to speak about solely personal or irrelevant topics since

individuals using this method of addressing the Board are not constrained to speak regarding items on the Board agenda for that specific meeting.

Third, the avenue of public address containing the public interest requirement narrowly advances these interests. The school board's policy is narrowly tailored, because it only prohibits speech that is not in the public interest. Therefore, the policy allows all speech except when it is not relevant to the public at large.

Fourth, the policy allows ample alternative channels of communication. As outlined above, the policy contains an alternative method of speaking before the Board that does not contain a public interest exception. Thus, a speaker at a Board meeting is only subject to the public interest requirement if they actively choose to be pursuant to the Defendant's policy.

Further, Tennessee law allows citizens to contact members of public bodies like the school board outside of the context of board meetings. *Lowery*, 586 F.3d at 434. Therefore, there are multiple alternative channels of communication not subject to a public interest requirement available to constituents wishing to speak with the

members of the Wilson County Board of Education. Taking all of this into consideration, the public interest requirement in Policy 1.404 constitutes a reasonable time, place, and manner restriction. As a result, the Plaintiffs do not demonstrate a strong likelihood of success on the merits, and the District Court's denial of the Motion for Preliminary Injunction should be upheld.

C. The public-interest requirement does not constitute an impermissible prior restraint.

1. The public-interest requirement is viewpoint neutral and reasonable in light of the purpose served by the forum.

The Plaintiffs also challenge the "public interest" language contained within Wilson County Board of Education Policy 1.404 by arguing that this "public interest" requirement violates the First Amendment because it imposes "an impermissible prior restraint." (Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction, R.17, PageID#105). However, as the trial court correctly noted, Wilson County Board of Education Policy 1.404 does not constitute a prior restraint. "In its simple, most blatant form, a prior restraint is a law which requires submission of speech to an official who

may grant or deny permission to utter or publish it based upon its contents." *Alexander v. United States*, 509 U.S. 544, 566 (1993) (Kennedy, J., dissenting).

As this Court knows, its previous *Lowrey* decision is directly on point here. Specifically, *Lowery* dealt with a school board policy that allowed citizens to receive approval to speak for five minutes at board meetings. *Lowery,* 586 F.3d at 433. In that case, the policy provided that "the director of schools shall take appropriate steps to determine that appeals or appearances before the board are not frivolous, repetitive, nor harassing in nature." *Id.* It also gave authority to the chairman to "terminate the remarks of any individual who does not adhere to the above rules or chooses to be abusive to an individual board member or the board as a whole." *Id.* The policy in *Lowery* also gave the board the right to vote at the meeting to allow someone who had not gone through the screening process to also be allowed to speak at the meeting. *Id.*

In *Lowery*, the plaintiffs had called the defendants prior to a board meeting in order to apply to speak about a particular topic. *Id.* at 431. The permission was granted and at the following board meeting an attorney spoke on the plaintiffs' behalf in criticizing various school

officials. *Id.* Approximately a month later the plaintiffs once again called requesting speaking time on the same topic at the following board meeting. *Id.* Upon the second request the defendants denied the plaintiffs' request. *Id.* Based upon the denial of the request the plaintiffs filed a lawsuit claiming the school board had violated their First Amendment rights by prohibiting them to make a second appearance before the board. *Id.* In *Lowery* plaintiffs argued that denying the request ahead of time rather than waiting to regulate speech after hearing it imposed a "prior restraint" on the speaker which subjected the denial to a more rigorous scrutiny and required more procedural safeguards. *Id.* at 433.

In *Lowery* this Honorable Court rejected that argument stating, "[I]t is true that the defendants 'restrained' the plaintiffs from speaking 'prior' to the meeting, but that does not make their actions a 'prior restraint' in a First Amendment sense." *Id.* These Defendants argue that this Honorable Court's reasoning in *Lowery* is directly applicable here given that its facts, as well as the applicable law, are directly analogous to the instant matter.

In *Lowery*, this Honorable Court found that the defendants could deny an individual's request to speak about a topic that the defendants

determined to be "frivolous, repetitive, or harassing in nature." *Id.* at 433. In the case currently before this Honorable Court, Wilson County Board of Education Policy 1.404 allows an individual to ask any board member for permission to speak about a topic that is not on the agenda. Pursuant to that policy a board member may deny that request if he or she determines that it is not "in the public interest." Due to the similarity of facts between the two cases, these Defendants respectfully submit that, based on those similarities, this Honorable Court must apply *Lowery* and conclude the public interest provision does not constitute a prior restraint.

In summation then, Board meetings are limited public forums. In a limited public forum, the government may restrict speech so long as the restrictions are viewpoint neutral and "reasonable in light of the purpose served by the forum." *Good News Club*, 533 U.S. at 106-07. The public-interest requirement, as discussed *supra,* is both viewpoint neutral and reasonable in light of the purpose served by the forum. This Court's precedent supports these positions. As a result, the Plaintiffs do not demonstrate a strong likelihood of success on the merits, and the denial of their Motion for Preliminary Injunction should be upheld.

2. The public-interest requirement is an appropriate time, place, and manner restriction.

As noted above, the Plaintiffs argue that the "public interest" requirement contained in Wilson County Board of Education Policy 1.404 violates the First Amendment because it imposes "an impermissible prior restraint." (Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction, R.17, PageID#105). However, the public-interest requirement in Wilson County Board of Education Policy 1.404 does not constitute a prior restraint.

Again, the Defendants believe it is clear that the public-interest requirement is a reasonable time, place, and manner restriction. In the interest of conducting orderly and efficient meetings, school boards and other similar public bodies are permitted to adopt time, place, and manner rules or regulations. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983). The government may regulate the time, place and manner of speech so long as the regulation is (1) content-neutral, (2) narrowly tailored to serve a significant governmental interest and (3) leaves open ample alternative channels for

communication of the information. *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293-95 (1984).

The public-interest requirement, as discussed *supra,* meets all three requirements, and, therefore, constitutes an appropriate time, place, and manner restriction. As a result, the Plaintiffs do not demonstrate a strong likelihood of success on the merits, and the denial of their Motion for Preliminary Injunction should be upheld.

The policies do not violate the Plaintiffs' right to petition.

In this case, the Plaintiffs argue that the address-disclosure requirement, the restriction on "abusive" language, and the public interest requirement violate the Plaintiffs' right to petition the government for a redress of grievances. (Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction, R.17, PageID#106). As noted above, the Defendants have changed their practices with regard to the address-disclosure requirement and the restriction on "abusive" or "disruptive" language. These changes have been in place for a year at the time of this briefing. Therefore, these policies do not violate the Plaintiffs' right to petition. Further, the public interest requirement does not violate the Plaintiffs' right to petition for the reasons that follow.

The Petition Clause of the First Amendment bars the government from "abridging . . . the right of the people…to petition the government for a redress of grievances." *Gable v. Lewis*, 201 F.3d 769 (6th Cir. 1999). A cause of action for violation of the Petition Clause is subject to the same analysis applied to a claim arising under the Speech Clause. *Valot v. Southeast Local School Dist. Bd. of Educ.*, 107 F.3d 1220 (6th Cir. 1997). Importantly here, the right to petition is limited to matters of public concern. *Valot*, 107 F.3d at 1226. A particular expression addresses a matter of public concern where it can be fairly considered as relating to any matter of political, social, or other concern to the community. *Id.*

Here, the public interest requirement does not violate the Plaintiffs' right to petition. In order to appear before the Board to speak regarding a matter not on the Board's meeting agenda, the individual's comments must be in the public interest, or in other words, must be relevant to the general population. This point of law is directly dealt with in *Valot*. *Id.* The First Amendment right to petition is limited to matters of public concern. *Id.* Public interest is synonymous with public concern. Therefore, the Defendants' requirement that the speaker's topic must be in the public interest does not violate the right to petition under the First

Amendment. As a result, the Plaintiffs do not demonstrate a strong likelihood of success on the merits, and the denial of their Motion for Preliminary Injunction should be upheld.

III. The movants will not suffer irreparable harm if the injunction is not issued.

As the trial court correctly deduced, the Plaintiffs will not suffer irreparable harm if the injunction is not issued. First, the Defendants have changed their policies and practices with regard to both the address-disclosure requirement and the restriction against "abusive" or "disruptive" language. In contrast to the Plaintiffs' assertions which have not weathered the test of time, these modifications were not momentary revisions intended to hoodwink the Plaintiffs (and the trial court).

Instead, these changes have been in place for a year at this point and remain so going forward. As a result, those issues are moot and the Plaintiffs are not in danger of suffering irreparable harm. Second, the Plaintiffs will not suffer irreparable harm as a result of the public interest requirement. As noted above, the public interest requirement is an appropriate time, place, and manner restriction and is analogous to other policies and practices approved of by this Court previously in

similar cases. The Plaintiffs will not suffer irreparable harm as a result of the Board imposing an appropriate time, place, and manner restriction.

IV. Issuance of the injunction would cause substantial harm to others and the public interest would not be served by issuing the injunction.

While the Plaintiffs have not been harmed in the absence of an injunction, the issuance of their requested injunction would cause substantial harm to others, and the public interest would not be served by issuing the injunction. As noted above, the Defendants have changed their practices with regard to both the address-disclosure requirement and the restriction against "abusive" or "disruptive" language. Those changes have been in place for a year and will continue into the future. Therefore, those issues are moot.

With respect to the public interest requirement, as previously noted by this Court, there is a significant governmental interest in maintaining structured, orderly school board meetings. ("Unstructured, chaotic school board meetings not only would be inefficient but also could deny other citizens the chance to make their voices heard…That is why 'public bodies may confine their meetings to specified subject matter.'") *Lowery v. Jefferson County Bd. of Educ.,* 586 F.3d 427 (6th

Cir. 2009). Issuance of the injunction would work in opposition to this, resulting in unstructured, disorderly school board meetings, because individuals would be permitted to speak about topics that are not relevant to the general public. Without the public interest requirement, individuals could appear before the Board and speak about any topic – regardless of its relevance to the public or the purpose of the forum. Therefore, issuance of the injunction would cause substantial harm to others, and the public interest would not be served by issuing the injunction.

v. The Court should not waive Rule 65(c)'s bond requirement.

While this point was not addressed by the trial court since it denied the Plaintiff's requested injunction, the Defendants are including it here out of an abundance of caution since the Plaintiffs are before this Court requesting a reversal of the trial court's decision. In their Motion for Preliminary Injunction, the Plaintiffs argue that the Court should waive Rule 65(c)'s bond requirement. (Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction, R.17, PageID#107). Federal Rule of Civil Procedure 65(c) provides, "The court may issue a preliminary injunction or a temporary restraining order only if the

movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." The Court possesses discretion over whether to require the posting of security. *Moltan Co. v. EaglePicher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995). When determining whether to require the party seeking an injunction to give security, courts have considered factors such as the strength of the movant's case and whether a strong public interest is present. *Id.*

In the event this Honorable Court reverses the denial of the Motion for Preliminary Injunction, the Plaintiffs should be required to post a security bond. As noted above, the Plaintiffs do not have a strong likelihood of success on the merits. Further, there is a strong public interest in maintaining structured, orderly school board meetings, which would be impeded if the injunction is issued. *Lowery v. Jefferson County Bd. of Educ.*, 586 F.3d 427 (6th Cir. 2009). Based on the weakness of the Plaintiffs' case and on the fact that the public interest would not be served by issuance of the injunction, the Plaintiffs should be required to post a security bond pursuant to Rule 65(c).

CONCLUSION

Based on the foregoing, the Defendants, Wilson County Board of Education, also known as Wilson County Schools; Jamie Farough, individually and in her official capacity as a member of the Wilson County Board of Education; Kimberly McGee, in her official capacity as a member and Vice Chairman of the Wilson County Board of Education; Melissa Lynn, in her official capacity as a member of the Wilson County Board of Education; Beth Meyers, in her official capacity as a member of the Wilson County Board of Education; Joseph Padilla, in his official capacity as a member of the Wilson County Board of Education; Carrie Pfeiffer, in her official capacity as a member of the Wilson County Board of Education; and, Larry Tomlinson, in his official capacity as a member of the Wilson County Board of Education, respectfully request that this Honorable Court affirm the denial of the Plaintiffs' Motion for Preliminary Injunction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

As required by Federal Rule of Appellate Procedure 32(g) and 6th Cir. R. 32, I certify that this brief complies with the type-volume limitation in Fed. R. App. P. 32(a)(7)(B) because it contains 8,849 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 6th Cir. R. 32(b)(1).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Georgia, a proportionally spaced typeface, in 14-point font using Microsoft Word.

/s/Christopher C. Hayden

CERTIFICATE OF SERVICE

I certify that on April 1, 2024, I electronically filed this brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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